

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2023-0002
)	
Cardinal Forge)	Proceeding to Assess a Class II Civil
Rochelle, Illinois)	Penalty under Section 309(g) of the Clean
)	Water Act, 33 U.S.C. § 1319(g)
Respondent.)	
)	
)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Cardinal Forge (“Respondent”), an Illinois corporation with its principal place of business in Rochelle, Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or the conclusions of law as set forth in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); its right to appellate review under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication

Statutory and Regulatory Background

9. Section 307(b) of the Act, 33 U.S.C. § 1317(b), states “[t]he Administrator shall publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works”

10. Pursuant to 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator published “General Pretreatment Regulations for Existing and New Sources” on January 28, 1981, codified

at 40 C.F.R. Part 403. By the terms of this regulation, the requirements of 40 C.F.R. Part 403 became effective three years from the date of promulgation.

11. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), the Administrator published the Aluminum Forming Point Source Category on October 24, 1983, 48 Fed. Reg. 49126, (codified at 40 C.F.R. Part 467). Pretreatment Standards for New Sources under this category became effective on October 24, 1983, including 40 C.F.R. § 467.46 which addresses, in part, Solution Heat Treatment Contact Cooling Water.

12. Section 307(d) of the Act, 33 U.S.C. § 1317(d), states that [a]fter the effective date of any ... pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such ... pretreatment standard.”

13. “Facility” means the Cardinal Forge facility located at 1040 South Main Street, Rochelle, Illinois.

14. “GPD” means gallons per day.

15. “Outfall” means a type of “point source,” as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), that serves as a discharge point from the facility.

16. “Parties” means EPA and Respondent.

17. “Person,” as defined in Section 502(5) of the CWA, means an “individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

18. “Point source,” as defined in Section 502(14) of the CWA, means “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

19. “Pollutant,” as defined in Section 502(6) of the CWA, means “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

20. “Publicly Owned Treatment Works” or “POTW” means a treatment works, as defined in Section 212 of the CWA, 33 U.S.C. § 1292(2), that is owned by a State, Tribe, or a municipality (as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4)). Pursuant to 40 C.F.R. § 403.3(q), the definition of POTWs includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4), that has jurisdiction over indirect and direct discharges to such a treatment works.

21. 40 C.F.R. § 403.3(c) defines the term “Approval Authority” to mean the appropriate EPA Regional Administrator who oversees a National Pollution Discharge Elimination System (NPDES) for a State that lacks an approved State pretreatment program.

22. 40 C.F.R. § 403.3(f)(2) states that the term “Control Authority” refers to the Approval Authority if the POTW's Pretreatment Program Submission has not been approved by the Approval Authority.

23. 40 C.F.R. § 403.3(i) states that the term “Indirect Discharge” or “Discharge” means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c), or (d) of the Act.

24. 40 C.F.R. § 403.3(j) defines the term “Industrial User” to mean a source of Indirect Discharge.

25. 40 C.F.R. § 403.3(m)(1) defines a “New Source” as any building, structure, facility, or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section (new source date).

26. 40 C.F.R. Part 467, Subpart A, Section 467.01(a) states that the provisions for the Aluminum Forming Source Category are applicable to “...commonly recognized forming operations such as rolling, drawing, extruding, and forging and related operations such as heat treatment, casting, and surface treatments.”

27. 40 C.F.R. § 467.46, Subpart D states that the provisions for the Aluminum Forming Point Source Category, and solution heat treatment contact cooling water, are applicable to the introduction of pollutants into publicly owned treatment works resulting from aluminum forming operations.

28. 40 C.F.R. § 464.02(l) defines heat treatment as the application of heat of specified temperature and duration to change the physical properties of the metal.

29. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C.

§ 1319(g)(2)(B), when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1317.

Factual Allegations and Alleged Violations

30. Respondent is a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

31. At all times relevant to this Order, Respondent owned and operated Cardinal Forge, a forging facility, located in Rochelle, Illinois. The Facility has discharged wastewater from its solution tanks to the City of Rochelle POTW.

32. 40 C.F.R. § 403.1(b)(1) states the General Pretreatment Regulations for Existing and New Sources of Pollution apply to pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or otherwise introduced into POTWs.

33. 40 C.F.R. § 403.1(b)(4) states that the General Pretreatment Regulations apply to any new or existing source subject to Pretreatment Standards.

34. EPA is both the “Control Authority” and the “Approval Authority” as these terms are used in this Order and as defined in the General Pretreatment Regulations at 40 C.F.R. § 403.3(c) and (f).

35. Respondent is an Industrial User subject to the General Pretreatment Regulations at 40 C.F.R. § 403 as these terms are used in this Order and as defined in the General Pretreatment Regulations at 40 C.F.R. § 403.3(i) and (j).

36. On March 3, 2021, EPA conducted an inspection at the Facility. On April 22, 2021, EPA submitted a report of the March 3, 2021, inspection to Cardinal Forge and included the following findings:

- a. During the March 3, 2021, inspection, Cardinal Forge staff stated that the Facility began operations in 2001;

- b. Three of the heat solution tanks have been in use since operations began in 2001;
and
- c. The Facility has expanded capacity over time and as of March 3, 2021, the Facility had six heat solution tanks in use.

37. Since the forging and heat solution tanks processes at the Facility began in 2001, the forming process at the Facility is subject to pretreatment standards for new sources set forth in 40 C.F.R. § 467 (the Aluminum Forming Point Source Category).

38. On June 22, 2022, Cardinal Forge staff provided documentation that the Facility processed 813,841 pounds of aluminum between December 20, 2021 and May 18, 2022.

39. Using Cardinal Forge's processing and operating data, EPA determined that Cardinal Forge processes an average of 8,554 pounds of aluminum per day, or 0.008554 million pounds per day.

40. The Pretreatment Standards under the Aluminum Forming Point Source Category, Solution Heat Treatment Contact Cooling Water, at 40 C.F.R. § 467.46 state that any new source subject to this subpart which introduces pollutants into POTW must comply with 40 C.F.R. Part 403 and achieve the following pretreatment standards for new sources:

- a. For Chromium, the monthly average limit is 0.31 pounds per million pounds of aluminum forged, with a one day maximum of 0.76 pounds per million pounds of aluminum forged;
- b. For Cyanide, the monthly average limit is 0.16 pounds per million pounds of aluminum forged, with a one day maximum of 0.41 pounds per million pounds of aluminum forged;

- c. For Zinc, the monthly average limit is 0.86 pounds per million pounds of aluminum forged, with a one day maximum of 2.08 pounds per million pounds of aluminum forged;
- d. For Total Toxic Organics (TTO), the one maximum is 1.41 pounds per million pounds of aluminum forged; and
- e. For Oil and Grease, which is an alternative monitoring parameter, the monthly average limit is 20.37 pounds per million pounds of aluminum forged, with a one day maximum of 20.37 pounds per million pounds of aluminum forged.

Failure to Conduct Required Pollutant Sampling

41. The statements in paragraphs 1 through 40 are hereby incorporated by reference as if set forth in full.

42. Under 40 C.F.R. § 403.12(e), any industrial user subject to a categorical Pretreatment Standard shall submit to the Control Authority during the months of June and December a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards.

43. On December 22, 2021, Cardinal Forge submitted its first period compliance report to EPA, the Control Authority, for the discharge from its heat solution tanks.

44. From August 1, 2017 to July 30, 2021, Cardinal Forge failed to submit eight period compliance reports to EPA, the Control Authority.

Civil Penalty

45. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$23,989 per day of violation up to a total of \$299,857, for violations of the CWA that occurred after November 2,

2015 and for which penalties are assessed on or after January 12 , 2022, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

46. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$35,000.

47. Within 30 days after the effective date of this CAFO, Respondent must pay the \$35,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

48. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must write the case docket number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Ted Flatebo (ECW-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Cynthia King (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

49. This civil penalty is not deductible for federal tax purposes.

50. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

51. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must pay the United States' attorney fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

General Provisions

52. The parties consent to service of this CAFO by email at the following valid email addresses: flatebo.ted@epa.gov and king.cynthia@epa.gov (for Complainant) and falbe@millercanfield.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

53. Full payment of the penalty as described in paragraphs 47 and 48 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 47 and 48 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

55. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

56. Respondent certifies that it is complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

57. The terms of this CAFO bind Respondent and its successors and assigns.

58. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

59. Each party agrees to bear its own costs and attorney fees in this action.

60. This CAFO constitutes the entire agreement between the parties.

61. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution

of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

62. When final and effective, this CAFO is a “final order” for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA’s Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

63. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

In the Matter of:

Cardinal Forge

Docket No. CWA-05-2023-0002

Cardinal Forge, Respondent



Kent Paul
Chief Financial Officer
Cardinal Forge

2-13-2023

Date

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

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MICHAEL HARRIS
Date: 2023.02.21 08:43:09
-06'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

In the Matter of:
Cardinal Forge
Docket No. CWA-05-2023-0002

Final Order

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: ANN COYLE Digitally signed by ANN COYLE
Date: 2023.04.06
10:11:44 -05'00' _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5